

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

|                               |   |                             |
|-------------------------------|---|-----------------------------|
| UNITED STATES OF AMERICA      | ) |                             |
|                               | ) | Criminal No.: 3:00-CR-400-P |
| v.                            | ) |                             |
|                               | ) | Judge Jorge A. Solis        |
| MARTIN NEWS AGENCY, INC.; and | ) |                             |
| BENNETT T. MARTIN,            | ) |                             |
|                               | ) | FILED: April 30, 2001       |
| Defendants.                   | ) |                             |

RESPONSE OF THE UNITED STATES TO  
DEFENDANTS' MOTION FOR DISCLOSURE AND NOTICE  
OF EVIDENCE OF OTHER CRIMES, WRONG OR ACTS (RULE 404B)

I  
INTRODUCTION

Defendants have filed a *Motion for Disclosure and Notice of Evidence of Other Crimes, Wrong or Acts (Rule 404B)* ("Motion") with this Court asking the Court to order the United States to provide them with reasonable notice of evidence the United States intends to introduce at trial under Rule 404(b) of the Federal Rules of Evidence. Specifically, defendants request reasonable notice of defendants' prior convictions, alleged violations of the law not alleged in the indictment, or extraneous wrongs or acts of which the government is aware. Motion, p. 1.

The United States understands its obligations under Rule 404(b). The United States has not determined what, if any, 404(b) evidence it will introduce at trial. In the event the United States determines it necessary and proper to introduce other acts evidence, the defendants will be given reasonable notice of the general nature of any such evidence in advance of trial, as required by Rule 404(b). Accordingly, defendants' Motion requesting 404(b) notice "well before trial" should be denied.

II  
THE UNITED STATES WILL COMPLY WITH RULE 404(b)

Defendants request disclosure of 404(b) evidence “well before trial.” Motion, p. 1. Defendants do not suggest how far in advance of trial disclosure should be made. At this date, two and one-half (2 ½) months remain until the date this case is set for trial, July 9, 2001. Rule 404(b) requires reasonable notice in advance of trial, not notice well before trial. The Rule does not provide for a specific time limit because “what constitutes a reasonable request or disclosure will depend largely on the circumstances of each case.” Fed. R. Evid. 404 Advisory Committee’s Note (1991). Indeed, Rule 404(b) expressly provides that for good cause shown, reasonable notice of other acts evidence may be made “during trial.” Courts have typically considered notice provided about two weeks before trial “reasonable notice.” See, e.g., United States v. Kern, 12 F. 3d 122 (8th Cir. 1993) (14 days was reasonable notice); United States v. Williams, 792 F. Supp. 1120, 1133-34 (S.D. Ind. 1992) (creating rebuttable ten day rule); United States v. Evangelista, 813 F. Supp. 294 (D.N.J. 1993) (government ordered to provide notice 10 days before trial of alleged acts that occurred more than five years ago).

The United States will comply with its obligation to provide defendants notice before trial of 404(b) evidence it intends to use in this case. At this time, the United States has not determined whether to introduce 404(b) evidence. In the event the United States determines it will seek to introduce such evidence, it will provide defendants reasonable notice before trial of the general nature of the evidence.

III  
CONCLUSION

To the extent defendants' request notice of the government's intent to introduce 404(b) evidence well before trial, the United States respectfully requests that this Court deny their Motion. The United States will provide reasonable notice in advance of trial to defendants of the general nature of any evidence the United States intends to introduce under Rule 404(b).

Respectfully submitted,

SCOTT M. WATSON  
Chief, Cleveland Field Office

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"/s/"  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was sent via Federal Express to the Office of the Clerk of Court on this 27th day of April, 2001. In addition, copies of the above-captioned pleading were served upon the defendants via Federal Express on this 27th day of April 2001.

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“/s/”  
RICHARD T. HAMILTON, JR.